

**From:** Telesaurus [jstobaugh@telesaurus.com]

**Sent:** Tuesday, October 16, 2007 11:26 AM

**To:** 'Scot Stone'

**Cc:** 'warren havens'; 'Telesaurus'; marlene.dortch@fcc.gov; william.caton@fcc.gov

**Subject:** Further Clarification RE: Notices of withdrawal/dismissal: App for Review (actually a Petition for Recon), and Petition for Recon

**Attachments:** PtRecon3rdMO&O.pdf

Mr. Stone,

Yes, the Petition for Reconsideration of the denial of File No. 0002168992 does also relate to Call Sign WHV287. To clarify Mr. Havens' two numbered requests below:

- 1) We clarify that we are seeking to withdraw the Petition for Reconsideration of the denial of File No. 0002168992 only with respect to WHV653. It should remain pending for WHV287.
- 2) We clarify that we are seeking to withdraw the Petition for Reconsideration of the 3<sup>rd</sup> MO&O, a copy is attached hereto (We mistakenly referred to it as an Application for Review), solely with respect to the File Nos. listed below (853036-037 and 853070-072) and that the Petition for Reconsideration should remain pending for all other File Nos. and matters involved. This Petition for Reconsideration was filed on ECFS on 12/18/03.

Please let me know if you believe we should file a paper copy of this email string with the Office of the Secretary and in the relevant docket, PR Docket No. 92-257. I have cced here Ms. Dortch and Mr. Caton.

Sincerely,

Jimmy Stobaugh

On behalf of Warren Havens, currently traveling

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**From:** Scot Stone [mailto:Scot.Stone@fcc.gov]

**Sent:** Monday, October 15, 2007 9:49 AM

**To:** warren havens

**Cc:** Telesaurus Havens

**Subject:** RE: Notices of withdrawal/dismissal: App for Review, and Petition for Recon

The Petition for Reconsideration doesn't also relate to 0002168979, related to Call Sign WHV287?

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**From:** warren havens [mailto:warren.havens@sbcglobal.net]

**Sent:** Friday, October 12, 2007 9:59 AM

**To:** Scot Stone

**Cc:** warren havens; Telesaurus Havens; Marlene Dortch; William Caton; WTBSecretary

**Subject:** Re: Notices of withdrawal/dismissal: App for Review, and Petition for Recon

Mr. Stone:

Thank you for your prompt response.

We maintain that our notices of withdrawal/ dismissal with prejudice of the below-described applications are proper, are in effect under applicable law, and cause the Application for Review and Petition for Reconsideration to be moot with regard to those applications.

However -- in addition -- based on your initial response below (and no response yet from the Secretary's office), and our contract and business plan needs to expedite FCC acknowledgment of the dismissals with prejudice absent which we will incur increasing damages, --

1. We seek entire withdrawal and dismissal with prejudice, effective as soon as possible, of the Petition for Reconsideration of the denial of File No. 0002168992 (a construction extension request), related to Call Sign WHV653 (for AMTS station locations in Nevada) (that was terminated as a result of denial of the extension request). That call sign, and the related extension request, is the sole subject of that Petition: so, yes, this is a request to dismiss, with prejudice, that Petition in its entirety.

2. We seek partial withdrawal and dismissal with prejudice, effective as soon as possible, of the Application for Review that, among other applications, involves File Nos. 853036-037 and 853070-072 (all five for AMTS station locations in Nevada)-- where the withdrawal and dismissal with prejudice is with regard to the just-listed File Number applications, but not with regard to the other File Number applications (for AMTS station locations in Arizona) involved in said Application.

(That is another reason that our view is practical, in addition to being legally sound: an administrative or judicial appeal may involve many licensing applications: dismissed applications pending on appeal can be withdraw and dismissed with prejudice without effecting the pending appeal of other applications in the same appeal proceeding.)

W. Havens

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On Oct 12, 2007, at 6:04 AM, Scot Stone wrote:

Mr. Havens,

To confirm: you now seek withdrawal, and dismissal with prejudice, of the Application for Review and the Petition for Reconsideration *in their entirety*?

Scot Stone

Deputy Chief, Mobility Division

Wireless Telecommunications Bureau

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**From:** warren havens [<mailto:warren.havens@sbcglobal.net>]

**Sent:** Thursday, October 11, 2007 10:07 PM

**To:** Scot Stone

**Cc:** Telesaurus Havens

**Subject:** Fwd: Notices of withdrawal/dismissal: App for Review, and Petition for Recon

Mr. Stone: I meant to cc you.

-W. Havens

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Begin forwarded message:

**From:** warren havens <[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)>

**Date:** October 11, 2007 7:04:41 PM PDT

**To:** [Marlene.Dortch@fcc.gov](mailto:Marlene.Dortch@fcc.gov), [william.caton@fcc.gov](mailto:william.caton@fcc.gov), WTBSecretary <[WTBSecretary@fcc.gov](mailto:WTBSecretary@fcc.gov)>

**Cc:** warren havens <[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)>, Telesaurus Havens <[jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)>

**Subject:** Notices of withdrawal/dismissal: App for Review, and Petition for Recon

By this email, with a hard copy mailed by Federal Express to the Secretary's Office.

To: FCC and WTB Secretary,

Re: the Application for Review and the Petition for Reconsideration referenced in the email string below, to repeat-- (1) *Application for Review* of the Commission's *Third Memorandum Opinion and Order*, FCC 03-270, Rel. Nov. 18, 2003, 18 FCC Rcd 24391 (the "Application") and (2) *Petition for Reconsideration* of the denial of File No. 0002168992 (the "Petition");

This is a notice that I withdraw with prejudice, and request to dismiss with prejudice, the Application and the Petition.

Please acknowledge: that the Application and the Petition have been dismissed with prejudice, and that the underlying Applications (listed below) are permanently dismissed (no longer subject to any right of appeal).

While this notice and request is not required, since the underlying applications (that were dismissed but are pending during these administrative-appeal proceeding) were, by right, as noted below, already withdrawn and dismissed with prejudice, I submit this notice and request based on Mr. Stone's view below, as I understood it.

There are no mutually exclusive applications, or petitions to deny, or objections, or other matters, that are involved in the license applications underlying the Application or the Petition (the File Numbers are listed below), and thus, there is no statement required under Section 1.935 (as the notices discussed below also explained).

It "in the public interest" for the Application and Petition to be dismissed with prejudice, since the FCC has already found that its actions and rationale are "in the public interest" in the decisions which the Application and Petition contested, and further administrative processing of the Application and Petition, contrary to this notice and request, will only take up Commission resources in prosecuting a private licensing matter where the application has unequivocally stated its desire to abandon pursuit of said private licensing matter.

Also, in that regard, as noted to Mr. Stone below, this involves a contractual obligation of the undersigned, and delay in this will cause damages. Such damages, in turn, will diminish the damaged party's (the undersigned's) ability to use his FCC licenses for the public benefit.

Sincerely,

*[Filed electronically. Signature on file.]*

/s/

Warren Havens

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On Oct 11, 2007, at 3:50 PM, Scot Stone wrote:

Mr. Stobaugh,

As the Bureau previously held regarding other applications filed by Mr. Havens that were dismissed, once an application is dismissed, it no longer is "pending" such that it can be further processed, notwithstanding the filing of administrative or judicial appeals of the dismissal. See Order on Further Reconsideration, DA 06-791, 21 FCC Rcd 3553 (WTB 2006). Therefore, my view is that there is no application pending for you to withdraw or for us to (re-)dismiss. This constitutes my acknowledgment of the Notice that was filed on Tuesday (well, this and the date-stamped copy that I put in the mail today).

In addition, could I trouble you for a copy of the Application for Review referenced in the Notice?

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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**From:** Telesaurus [<mailto:jstobaugh@telesaurus.com>]

**Sent:** Wednesday, October 10, 2007 4:11 PM

**To:** WTBSecretary; Scot Stone

**Cc:** 'warren havens'; 'Jimmy Stobaugh'

**Subject:** Written Confirmation of Acceptance of Withdrawals requested in attached Notices

FCC Secretary and/or Mr. Scot Stone,

As requested in the attached "Notices of Withdrawal and Dismissal with Prejudice under 47 CFR §1.934" (the "Notices") that was filed yesterday with the FCC, could the FCC provide Mr. Havens and AMTS Consortium with some form of written acknowledgement that the withdrawals and dismissals with prejudice requested by the Notices have been accepted by the FCC?

Sincerely,

Jimmy Stobaugh,

On behalf of Warren Havens and

AMTS Consortium LLC

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**From:** Telesaurus [<mailto:jstobaugh@telesaurus.com>]

**Sent:** Tuesday, October 09, 2007 12:48 PM

**To:** [wtbsecretary@fcc.gov](mailto:wtbsecretary@fcc.gov)

**Cc:** 'Tom Kurian'; 'warren havens'; 'Jimmy Stobaugh'; [scot.stone@fcc.gov](mailto:scot.stone@fcc.gov)

**Subject:** Notices of Withdrawal and Dismissal with Prejudice under 47 CFR §1.934

Secretary,

Please see the attached “Notices of withdrawal and dismissal with prejudice under 47 CFR §1.934” (the “Notices”) regarding (1) Application File Nos. 853036-037 and 853070-072 (that are subject to an *Application for Review* of the Commission’s *Third Memorandum Opinion and Order*, FCC 03-270, Rel. Nov. 18, 2003, 18 FCC Rcd 24391) and (2) Call Sign WHV653 (that is subject of a pending *Petition for Reconsideration* of the denial of File No. 0002168992).

The Notices have already been filed via ULS and ECFS as indicated in the Notices and witnessed by the attached confirmations. An original and 4 copies has also been sent via overnight courier to the Office of the Secretary.

Sincerely,

Jimmy Stobaugh,

On behalf of Warren Havens and

AMTS Consortium LLC

Cc: Scot Stone, Deputy Chief, WTB

Thomas Kurian

Warren Havens